

REMARKS

Reconsideration of this application as amended is now being requested. Claims 1-20 are now in this application. Claim 6 has been amended.

The specification has been amended to include U.S. Application Serial Numbers for several U.S. Applications noted in the Related Application section of the specification.

Claim 6 was objected to because, in line 6, the limitation should have read "a phase swept signal  $s_1(a)$ " instead of "a phase swept signal  $s_1(b)$ ". Claim 6 has been amended accordingly.

Claims 1, 6, 11 and 16 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 13 and 19 of copending Application No. 09/918,392. A terminal disclaimer is being filed in response to the provisional obviousness-type double patenting rejection. See attached.

Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Gutierrez et al (IEEE, An Introduction to PSTN for IS-95 and cdma 2000) in view of Dent (US 5,584,057). In combining Gutierrez and Dent to reject claim 1, the office action states the following. First, Dent teaches that it is common for CDMA systems to transmit at different power levels based on the distance of the mobile station to the base station, thus, it would have been obvious to one of ordinary skill splitting a transmission signal at the base station in power levels necessary to comply with power tapering technique. Second, Dent identifies as a problem the interference caused by relatively high strength signals to which the lower strength signals are subjected when both signals are transmitted over the same frequency at the same time. The office action concluded that based on the teachings of Dent, it would have been obvious to one of ordinary skill in the art at the time

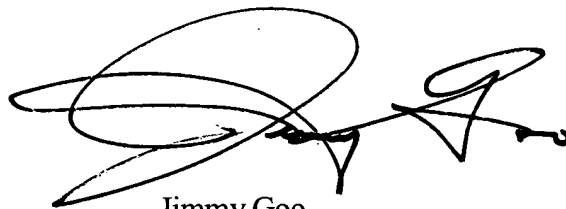
the invention was made, to solve the problem identified by phase sweeping the split signals with different frequencies, as disclosed by Gutierrez and thus in this manner decrease the possibility of interference between higher and lower strength signals. Applicant respectfully disagrees.

To establish a prima facie case of obviousness, the prior art reference must teach or suggest all the claim limitations and there must be some suggestion or motivation in the references themselves or in the knowledge generally to modify the reference or combine the references. Applicant does not believe these criteria were met by Gutierrez and/or Dent. Claim 1 involves splitting a signal into two signals where one of the signals has an associated power level higher than the other signal, and then phase sweeping the other signal associated with the lower power level. Gutierrez teaches splitting a signal into two signals and then phase sweeping the two signals, and Dent teaches amplifying (and then transmitting) signals intended for different mobile stations at different power levels depending on the distances at which the mobile stations are from the transmitting base station. Neither of the references, alone or in combination, teaches associating different power levels to two signals intended for a same mobile station. In fact, Dent would teach the opposite. As noted by the office action, Dent teaches transmit power levels based on distance the mobile station is from the base station. In the present invention, the two signals (resulting from the split) are intended for a same mobile station. That is, the distance the two signals would have to travel would be essentially the same. Thus, based on Dent, the transmit power level for these two signals (intended for a same mobile station) would be the same (not different). Accordingly, it is felt that claim 1 is patentable under 35 U.S.C. 103(a) over Gutierrez in view of Dent.

Claims 6, 11 and 16 were rejected for the same reasons as claim 1. Claims 6, 11 and 16 include essentially the same distinguishing element(s) as claim 1. Accordingly, it is felt that claims 6, 11 and 16 are also patentable under 35 U.S.C. 103(a) over Gutierrez in view of Dent.

Claims 2-5, 7-10, 12-15 and 17-20 depend upon, and include all the limitations of claims 1, 6, 11 and 16, respectively, and thus are also felt to be patentable under 35 U.S.C. 103(a) over Gutierrez in view of Dent.

Respectfully submitted,  
Roger David Benning  
R. Michael Buehrer  
Robert Atmaram Soni

A handwritten signature in black ink, appearing to be 'Jimmy Goo', with a large, stylized loop at the beginning and a trailing flourish.

Jimmy Goo

Reg. No. 36,528

Date: May 9, 2005

Attachments: Terminal Disclaimer